

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

<p>DAVID BRINSON,</p> <p style="text-align:center">Plaintiff,</p> <p style="text-align:center">v.</p> <p>CONAGRA FOODS, INC., and SEDGWICK</p> <p>CLAIMS MANAGEMENT SERVICES, INC.,</p> <p style="text-align:center">Defendants.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>CASE NO. 8:08CV133</p> <p>MEMORANDUM AND ORDER</p>
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This matter is before the court on Defendants' Motion to Dismiss Complaint. (Filing No. [25](#).) Plaintiff has filed an Objection to Defendants' Motion. (Filing No. [29](#).) Both parties have submitted Briefs in support of their filings (Filing Nos. [26](#) and [30](#)), as well as Reply Briefs (Filing Nos. [31](#) and [34](#)). Defendants have filed a Motion to Strike Reply Brief. (Filing No. [36](#).)

The parties agree that Sedgwick Claims Management Services, Inc., is not a proper party to this action. (Filing No. [26](#) at CM/ECF pp. 1-3; Filing No. [29](#) at CM/ECF pp. 1-2.) Accordingly, the court finds that the Complaint against Sedgwick Claims Management Services, Inc., should be dismissed without prejudice.

The remaining defendant, ConAgra, argues that its Rule 12(b)(6) Motion to Dismiss Complaint should be treated as a Motion for Summary Judgment pursuant Rule 12(d) of the Federal Rules of Civil Procedure, because Defendant has submitted "matters outside the pleadings." The court agrees. However, as set forth in Rule 12(d), "all parties must be given a reasonable opportunity to present all the material that is pertinent to the motion." Fed. R. Civ. Pro 12(d). Therefore, the court finds that Plaintiff must be given a reasonable

opportunity to respond to Defendant's Motion for Summary Judgment and will permit him 30 days in which to do so.

Also pending is Defendant's Motion to Strike Reply Brief. (Filing No. [36](#).) The court has carefully reviewed Plaintiff's Reply Brief (Filing No. [34](#)) and considered Defendant's Motion to Strike (Filing No. [36](#)) and finds that Defendant's Motion to Strike should be denied. The court will consider the arguments made in Plaintiff's Reply Brief when deciding the Motion to Dismiss.

IT IS THEREFORE ORDERED that:

1. The claims against Sedgwick Claims Management Services, Inc. (Filing No. [1](#)) are dismissed without prejudice;
2. By **January 29, 2009**, Plaintiff may submit affidavits or other evidence in response to Defendant's Motion to Dismiss Complaint (Filing No. [25](#)), which the court will treat as a Motion for Summary Judgment. In the event Plaintiff fails to submit affidavits or other evidence in response to Defendant's Motion; the court will rule on the Motion for Summary Judgment without further notice.
3. The Clerk of the court is directed to set a pro se case management deadline in this case using the following text: **January 29, 2009**: deadline for Plaintiff to submit affidavits or other evidence in response to Defendant's Motion to Dismiss Complaint (Filing No. [25](#)); and
4. Defendant's Motion to Strike Reply Brief (Filing No. [36](#)) is denied.

DATED this 30th day of December, 2008.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge